

**IN THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY  
TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

HOLLY KOSCAK, individually and as a  
parent of Tamaqua Area School District  
student J.K.

Case No. \_\_\_\_\_

DARRELL L. FLACK, JR. individually and  
as a parent of Tamaqua Area School District  
students L.A.H, K.H. and D.F.,

ANGELA M. FLACK, individually and as a  
parent of Tamaqua Area School District  
student D.F.,

SARA J. THIERER

Plaintiffs,

v.

TAMAQUA AREA SCHOOL DISTRICT

Defendant.

**COMPLAINT**

The children of Tamaqua, by, through and with their families, bring this action to ensure that their schools will remain a safe place to learn and grow. The board members of the Tamaqua Area School District have exceeded their authority and endangered their community by enacting School District Policy 705, a manifestly illegal policy that authorizes guns in the classrooms and lethal force in the halls. In so doing, the board has appropriated a power that the General Assembly has guarded jealously for itself – the right to regulate the use of firearms. If this Court does not act to enforce the will of the General Assembly, the result will be to create a patchwork of firearms laws around the Commonwealth, with each school district making its own determinations as to the means and use of lethal force in schools. School district boards are

neither equipped, nor authorized, to make such momentous decisions. The Tamaqua Area School District is a creature of limited powers, and the enactment of Policy 705 and appropriation of funds in support of it exceeded those powers. Policy 705 should be declared void and of no further force and effect.

### **The Parties**

1. The plaintiffs are residents of the Tamaqua Area School District (the “District”), who have children or grandchildren in District schools and who have and will enter school grounds to pick up, drop off or watch family members participate in sports, drama and other school activities. They bring this action on behalf of themselves, individually, and on behalf of their minor children.

2. Plaintiff Holly Koscak is a 48-year resident of the Borough of Tamaqua (“Tamaqua”). She is the mother of minor child J.K., who presently attends Tamaqua Area High School. Ms. Koscak is a responsible and registered owner of firearms, who wishes to ensure that the educators entrusted with the care of her children are not carrying weapons that will endanger the safety of her children.

3. Plaintiffs Darrell L. Flack, Jr. and Angela M. Flack are residents of Tamaqua. Mrs. Flack has three children in District schools: L.A.H. in the Tamaqua Area Middle School, K.H. in the Tamaqua Elementary School and D.F., who is in kindergarten and is also the child of Darrell Flack. Mr. and Mrs. Flack are also the parents of a three-year old, who will enter the school system in the near future. They believe that a teacher’s job is to teach and not to carry weapons in the classroom and are concerned about the safety of their children under Policy 705.

4. Plaintiff Sara J. Theirer is a long-time resident of the Tamaqua, who has raised both children and grandchildren in the District. She currently has three grandchildren in District

schools, including S.E., who is a student at Tamaqua Area High School, A.E, who is a student of the Tamaqua Area Middle School, and M.T., who is a student at the West Penn Elementary School. Ms. Thierer is a proud Tamaqua grandparent, who enjoys participating in the life of the school. She has attended basketball practices, plays and other school events and drives her grandchildren to school when needed. She is concerned about the way in which Policy 705 was passed and does not believe that the District has an adequate plan in place for training employees to carry firearms. She fears for the safety of students and visitors, like herself, who might be on school grounds during an incident. She believes that private citizens, like schoolteachers, should focus on teaching and are not qualified to deal with the enormous responsibility of confronting an active shooter.

5. Defendant Tamaqua Area School District is a school district of the second class and a political subdivision of the Commonwealth of Pennsylvania. The District operates four school buildings in which it educates over 2,000 students. The District's business office is located at 318 West Broad Street, Tamaqua, Pennsylvania 18252. The District is governed by a nine-member Board.

### **Jurisdiction and Venue**

6. This Court has original jurisdiction over this action for declaratory and equitable relief pursuant to Sections 931(a) and 7532 of the Pennsylvania Judicial Code, 42 Pa. C.S. §§ 931(a), 7532.

7. Venue is proper in this judicial district because the District is a political subdivision located within the territorial limits of Schuylkill County. Pa. R.C.P. § 2103(b).

**Factual Background**  
**The Secret Passage of Policy 705**

8. School Board Policy 705 is entitled “Standard Operating Procedures for Persons Authorized to Use Weapons” (“Policy 705” or the “Policy”). A true and correct copy of Policy 705 is attached as Exhibit A. Sometime prior to July 2018, the Board began private discussions regarding the modification of Policy 705, with the goal of authorizing teachers and other school employees to carry concealed firearms on school premises.

9. The Board hoped to make the District the first school district in the Commonwealth with armed teachers. Fully aware that introducing guns into classrooms would be extremely controversial, the Board took active steps to conceal its plan from the public.

10. At its meeting of June 12, 2018, the Board discussed multiple alternatives for increasing security at District schools, including hiring security guards and local police, as many other school districts have done around the state, as well as arming certain staff members. The Board promised to do careful due diligence before taking any action.

11. That due diligence was not to be. Instead, by July 2018, members of the Board had drafted a revised Policy 705, purporting to authorize classroom teachers and other school employees to carry weapons and use lethal force. The drafting was done in secret and without public input. The Board gave no prior notice to the public of the change or that they planned to vote on the Policy at the next meeting.

12. The Board minutes for the July 17, 2018, meeting reflect that the Board held no hearings that day. They did, however, pass the most radical change to school security policy in the history of the Commonwealth. As the minutes reflect, the Board pushed the changes through without a public reading:

Security Committee – Boyle presented the following item as a recommendation of the Security Committee.

Boyle made a motion seconded by Rother to approve the following: Schoener made a motion seconded by Miller to forgo the reading of the following policy. Wittig, Rottet, Schoener, Boyle, Meiser Miller and Zuber all voted "FOR." First reading of the following policy: Policy #705 Standard Operating Procedures for Persons Authorized to Use Weapons Wittig, Rottet, Schoener, Boyle, Meiser Miller and Zuber all voted "FOR."

Tamaqua School Board Meeting Minutes, July 17, 2018. True and correct copies of the Tamaqua School Board Meeting Minutes for July 17, 2018, August 21, 2018 and September 18, 2018 are attached hereto as Exhibit B.

13. The Board held its next meeting on August 21, 2018. No hearings were held that day either. Instead, the Board voted a second time to approve the Policy without a public reading:

Security Committee – Boyle presented the following item as recommendations of the Security Committee.

Boyle made a motion seconded by Rother to approve the following: Schoener made a motion seconded by Meiser to forgo the second reading of the following Policy: Wittig, Schoener, Boyle, Dillman, Meiser, Miller, Rother and Zuber all voted "FOR." First reading of the following policy: Policy #705 Standard Operating Procedures for Persons Authorized to Use Weapons (revised) Wittig, Schoener, Boyle, Dillman, Meiser, Miller, Rother and Zuber all voted "FOR." (Exhibit B).

14. The Board repeated the exercise for a third time at the September 18, 2018, meeting. Once again, the Board held no hearings, but voted unanimously to forgo a reading and simply passed the bill. As the minutes reflect:

Security Committee – Boyle presented the following item as recommendation of the Security Committee. Boyle made a motion seconded by Rother to approve the following. Schoener made a motion seconded by Meiser to forgo the reading: Second reading of the following policy: Policy #705 Standard Operating Procedures for Persons Authorized to Use Weapons (revised) Adoption of Policy #705 Wittig, Schoener, Boyle, Dillman, Meiser, Miller, Rother and Zuber all voted "FOR." (Exhibit B).

15. Because there was no public discussion of Policy 705, and even the scant information provided in the minutes was published months later, the public had no idea of the

extraordinary change the Board had wrought. Indeed, the Board had not even informed the teachers before voting.

16. Having passed Policy 705, the Board then needed to fund it, and that led to the discovery of their plan. At a working session on October 9, 2018, the Board's Safety Committee recommended that the District pay school resource officers \$2,000 a year and provide each with a life insurance policy with a death benefit of \$250,000. Board President Larry Wittig disclosed that the Board planned to arm teachers under the plan. He said "We could have one teacher or we could have a hundred. We won't know until we put it out there." See Cwalina, *Tamaqua School District Mulls Armed Staff*, [www.tnoline.com/tamaqua-school-district-mulls-armed-staff](http://www.tnoline.com/tamaqua-school-district-mulls-armed-staff) (October 10, 2018).

17. By November the word was out, and a firestorm of protest erupted in the District. Concerned parents and teachers – many of them responsible and supportive gun owners – were incredulous that the District planned to allow teachers to carry concealed weapons in classrooms and that the Board had passed the Policy without public debate. When pressed, Wittig claimed: "The training that will be administered to any volunteer, they will be better equipped than the average police academy grad." See Rultenberg, *Tamaqua School District Considers Arming Teachers*, [www.wfmz.com/news/poconos-coal/tamaqua-school-district-considers-arming-teachers/838430719](http://www.wfmz.com/news/poconos-coal/tamaqua-school-district-considers-arming-teachers/838430719) (November 1, 2018). In fact, Policy 705 provided for no such training.

18. On November 7, 2018, the Board held an open meeting, and over 100 concerned parents, students, and teachers packed the Tamaqua Area Middle School cafeteria to discuss the already-passed Policy. Students, parents, and teachers expressed their frustration with the Policy and the way it had been enacted. Members of the public presented extensive research and alternatives. Wittig said: "We will look into everything people presented — I can promise you

that.” See, Wojcik, *Tamaqua Policy to Arm School Staff Comes Under Fire*, The Moring Call (November 7, 2018), [www.mcall.com/news/education/mc-nws-tamaqua-teachers-with-guns-meeting-20181105-story.html](http://www.mcall.com/news/education/mc-nws-tamaqua-teachers-with-guns-meeting-20181105-story.html).

19. But the Board had no more interest in hearing from the community after passage of Policy 705 than it had before passing the amendments. All efforts to get the Board to delay or rescind the Policy have failed. Indeed, the Board has refused to answer questions from the public about whether school employees are already carrying firearms.

20. Policy 705, as amended, contains the following provisions pertaining to the carrying of firearms and delegation of police power to teachers and other school employees:

(a) The first section is titled “Authority”, but it cites no statutory authority. Instead, Policy 705 creates a class of “School Resource Professionals” (“SRPs”), who are authorized “to possess particular weaponry on their person while exercising their duties.” SRPs are defined to include “administrators, teachers, or other employees” of the District. Policy at 1.

(b) The SRPs must undergo a vague “initial training session” on “the use of firearms and other district issued equipment.” There is no further detail on the content of the initial training. SRPs also receive ACT 235 training (22 P.S. § 41-50.1). Policy at 1. There is no requirement that SRPs receive training under the Municipal Police Education and Training Law, 53, Pa. C.S. §§ 2161-2171.

(c) SRPs must undergo “firearms qualification”, but there is no description of what is required to qualify. An SRP may fail the test the first time and take it a second time in the same day. Policy at 2.

(d) SRPs are required to notify their superiors “of any physical, emotional/mental or pharmacological conditions affecting his/her causing physical and/or mental impairment.” Policy at 7-8. There is no provision in the Policy for the independent assessment of an SRP’s fitness to carry firearms on school property or respond to an incident.

(e) The Policy authorizes SRPs to wear their weapons during normally assigned duties, which would include ordinary teaching duties. Policy at 2. Under the Policy, teachers will wear their weapons while at the blackboard or lecturing the class. There is no requirement that firearms be concealed, and nothing to prevent an SRP from keeping a firearm on or in a nearby desk.

(f) The Policy expressly authorizes SRPs to use deadly force, which is defined as “that force which is intended to cause death or seriously bodily injury or which creates some specified degree of risk that reasonable and prudent person would consider likely to cause death or serious bodily injury.” Policy at 3, ¶ 1.

(g) When using deadly force, SRPs are instructed to: (1) “shoot at the center of available body mass presented by the threat”, (2) “shoot at an alternative target, such as the head or pelvic area when circumstances render that ineffective” or (3) “[s]hoot at the head when the school resource professional has a reasonable belief that the suspect is in possession of a firearm, a bomb or other explosive device with the intent to carry out a suicide/homicide bombing.” Policy at 3-4, ¶ 3.

(h) The express authority to shoot to kill extends to juveniles: “No distinction need be made relative to the age of the intended target of deadly force”. Policy at 4, ¶ 5.



- (i) Verbal warnings are optional, and warning shots are not only discouraged, but prohibited. Policy at 4, ¶¶ 6, 8.
- (j) There are convoluted and impossible to follow instructions on what to do when bystanders are present. Policy at 4, ¶ 7.
- (k) SRPs are authorized to detain individuals until the arrival of the conventional police. Policy at 4, ¶ 9.
- (l) The Policy explicitly authorizes the discharge of firearms and provides a five-factor balancing test to determine whether the SRP has used “reasonable force”, including a catch-all factor of “[a]ny other exigent circumstances.” Policy at 4.
- (m) The Policy provides instructions on the escalating use of force, including how to employ police techniques, such as handcuffing, physical control, takedowns and striking the subject. Policy at 5.
- (n) SRPs are authorized to conduct searches if there is an immediate threat to life, and to detain individuals to assist administration officials or while awaiting the arrival of conventional police. Policy at 8.
- (o) SRPs are authorized to carry and use handcuffs to restrain and control persons who “constitute a threat to the School Resource Professional or other persons who may be present on school premises at the time of said arrest.” Policy at 8. They are also authorized to carry and use pepper spray “to subdue extremely disorderly and/or unruly persons . . . .” Policy at 9.

**The Legal Framework**  
**Education Law in the Commonwealth**

21. The Pennsylvania Constitution vests the authority over public schools in the General Assembly:

§ 14. Public school system.

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

Pa. Const. Art. II, B., § 14.

22. School districts, on the other hand, are bodies of limited authority. As the Pennsylvania Supreme Court stated 60 years ago:

It is clear, we repeat, that a public school or a public school district is not a constitutional body. . . . A School District is a creature or agency of the Legislature and has only the powers that are granted by statute, specifically or by necessary implication. *Barth v. School District of Philadelphia*, 393 Pa. 557, 562, 143 A.2d 909, 911 (1958).

23. There is no statute that specifically grants school districts of the second class the authority to arm teachers and other school employees, to regulate the use lethal force on school property, to grant police powers to school employees, or to disburse funds to further these purposes.

24. There is no statute that by necessary implication grants districts of the second class the authority to arm teachers and other school employees, to regulate the use lethal force on school property, to grant police powers to school employees, or to disburse funds to further these purposes.

### **Police and Firearms Regulation**

25. The General Assembly has guarded jealously its power to regulate the use of firearms in the Commonwealth, and there is no statute delegating that authority to school districts of the second class like the District.

26. Pursuant to 21 Pa. C.S. 6120(a): “No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” The statute explicitly defines “political subdivisions” to include school districts. 21 Pa. C.S. § 6120(b).

27. School districts of the second class, like the District, are bound by the prohibition in Section 6120 not to, *in any manner*, regulate the possession of firearms and are powerless to either authorize or restrict the use of firearms on school property. That power is reserved to the General Assembly.

28. The General Assembly has regulated many aspects of the use of firearms, making it a felony of the third degree to discharge a firearm “from any location into an occupied structure.” 18 Pa. C.S. § 2707.1. A “law enforcement officer engaged in the performance of his official law enforcement duties” is exempted from the scope of the offense. 18 Pa. C.S. § 2707.1(c). There is no exemption for teachers or school personnel, and the District lacks the power to authorize the discharge of firearms on school grounds.

29. The General Assembly has prohibited even the possession of firearms on school property pursuant to 18 Pa. C.S. § 912(c), making possession of a gun on the premises of a school in the District a criminal offense. The General Assembly exempted those possessing a weapon for use in conjunction with a supervised school activity, like a target shooting program,

or where the firearm “is possessed for other lawful purpose.” The law did not delegate to school districts of the second class the right to name their own lawful purposes.

30. Police officers acting in the course of their duties have the authority to carry and discharge their weapons; however, that power is granted to them only after the completion of comprehensive firearms training pursuant to the Municipal Police Education and Training Law, 53 Pa. C.S. §§ 2161-2171, 2167(a).

### **The School Code**

31. At the same time that the District was secretly considering making changes to Policy 705, the General Assembly was debating how to provide enhanced school security. As part of those deliberations, the Senate introduced S.B. 383, Reg. Sess. 2017-2018, which would have granted school districts the right to authorize employees to carry firearms. The bill would have required professional psychological evaluation of such employees, specific training and the creation of a firearm safety plan in conjunction with local police. S.B. 383 was defeated and did not become law.

32. On June 22, 2018, the General Assembly passed comprehensive legislation on the subject of school security in Article XIII-C of the School Code. 24 P.S. § 13-1301-C, et seq. Pursuant to the School Code, school police officers may be appointed by a judge of the court of common pleas of the county in which the school entity is located. 24 P.S. § 13-1302-C. There is no provision granting school boards the authority to arm teachers and school employees.

33. The powers of school police officers are subject to court (not school board) approval. 24 P.S. § 13-1302-C(b)(2). The prescribed procedure for obtaining court approval is mandatory, and the statute does not permit school districts, by vote of the school board, to vest employees with the police power to carry firearms or to arrest or detain students.

34. Pursuant to 24 P.S. § 13-1305-C, entitled “Firearm training”, any school police officer granted powers under Section 13-1302C or who has been authorized to carry a firearm must complete the training prescribed by the Municipal Police Education and Training Act or have graduated from the Pennsylvania State Police Academy or been employed as a State Trooper. 24 P.S. § 13-1305-C.

35. The School Code delineates the duties of school police officers and requires that they wear a badge with the words “School Police” when performing their duties. 24 P.S. §§ 13-1306-C, 13-1307-C.

36. School districts also have the option of employing independent contractors who are retired Federal agents or retired police officers or sheriffs. These individuals must also complete the annual firearms training required by the Municipal Police Officers’ Education and Training Commission. 24 P.S. § 13-1311-C.

37. The School Code also states that “nothing in this article shall be construed to preclude a school entity or nonpublic school from employing other security personnel as the school or entity or nonpublic school deems necessary.” 24 P.S. § 13-1312-C. This provision does not authorize the arming of teachers, let alone override the requirements of the aforementioned specific provisions relating to firearms use and training.

38. The School Code also authorizes school entities to appoint school resource officers and school security guards, neither of whose duties include the right to possess firearms on school property. Nor are such individuals authorized to make arrests, detain school children, carry firearms or use lethal force. 24 P.S. §§ 13-1313-C, 13-1314-C.

#### **Count I** **Declaratory Judgment of Unenforceability**

39. Paragraphs 1 through 38 are incorporated herein by reference.

40. As a school district of the second class, the authority of the District is limited, and it may only exercise powers “that are granted by statute, specifically or by necessary implication.” *Barth*, 393 Pa. at 562, 143 A.2d at 911.

41. The School Code, Article XIII-C, is entitled “School Police Officers and Resource Officers”. 24 P.S. § 13-1301-C, et seq. Article XIII-C provides a comprehensive framework governing the employment of police and resource officers at schools.

42. Policy 705 creates an unauthorized class of employees, called “School Resource Professionals”, with the authority of a police officer to carry and discharge firearms, to use lethal force, to detain people and otherwise exercise the police power, but who are not subject to the mandatory court approval process required by 24 P.S. § 13-1302-C.

43. There is no statute that authorizes, specifically or by necessary implication, the creation of the “School Resource Professionals” described in Policy 705.

44. It is unlawful for the District to employ individuals carrying firearms who have not completed the training required by the Municipal Police Education and Training Law, 53 Pa. C.S. §§ 2161-2171.

45. It is unlawful for the District to authorize the use of lethal force.

46. It is unlawful for the District to authorize its employees to commit violations of the criminal law by carrying firearms on school property and discharging their weapons into school buildings as prohibited by 18 Pa. C.S. §§ 912(c) and 2707.1.

47. The District is barred by 18 Pa. C.S. § 6120 from making regulations relating to the use of firearms, a power which is reserved to the General Assembly. Policy 705 improperly purports to regulate the use of firearms in numerous respects, both authorizing and placing limits on, the conditions for possession and use of firearms on school grounds.

48. The District may only expend funds strictly as authorized by the law, and there is no legislation permitting the District to expend funds in the form of payments to teachers to carry firearms, the purchase of life insurance, or for firearms training.

49. Policy 705 exceeds the powers granted by the General Assembly to the District under the School Code and 18 Pa. C.S. § 6120, and is, therefore, void and of no force and effect.

50. Because Policy 705 violates the law and is contrary to the will of the General Assembly, and Plaintiffs have no adequate remedy at law, the District should be enjoined from taking any action under Policy 705 and from authorizing any persons to carry firearms on school premises.

### **Prayer For Relief**

WHEREFORE, Plaintiffs request this Court to grant the following relief:

- (a) a declaration that Policy 705 is void and of no further force and effect;
- (b) a declaration that Policy 705 and any other policies that authorize or otherwise permit teachers or other personnel employed by the District to carry firearms without having completed the training required by the Municipal Police Education and Training Law, 53 Pa. C.S. §§ 2161-2171, are void and of no further force and effect.
- (c) preliminary and permanent injunctive relief against the implementation of Policy 705 and the authorization of school personnel to carry firearms on school property;
- (d) an award of Plaintiffs' costs and expenses; and
- (e) all other appropriate relief.

Dated: January 3, 2019

A handwritten signature in blue ink, reading "Martin J. Black". The signature is written in a cursive style with a horizontal line underneath.

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